



# The Texas Senate

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MAY 29 1996

Opinion Committee

**RO-898**

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SUBCOMMITTEE ON WATER

Honorable Dan Morales  
Attorney General  
State of Texas  
P.O. Box 2548  
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DREW T. DURHAM  
ATTORNEY GENERAL'S OFFICE

Dear General Morales,

I request that you reconsider Letter Opinion 95-088, which you issued in response to a request for an opinion I submitted to your office in 1995, designated ID# 32192. The question that I then asked was:

Are the salaries and expenses of the Medical Examiner's office authorized medical and hospital care expenses which can be funded by the Lubbock County Hospital District?

My concerns with Letter Opinion 95-088 are three. First Letter Opinion 95-088 seems to hold, not just that salaries and expenses of a medical examiner's office are not authorized medical and hospital expenses that can be funded by a county hospital district, but that the Lubbock County Hospital District's sole legitimate authority is limited to the provision of medical and hospital services to needy inhabitants of the county:

Thus hospital districts derive their authority from the constitution and the act enabling each particular district. See Attorney General Opinion M-171 (1967). Both sources of authority direct the districts to assume full responsibility for the provision of medical and hospital services to the needy inhabitants of the county in which such districts are located. Accordingly, the expenditure of taxes levied for hospital purposes is limited to the use set forth in the constitution. *Bexar County Hosp. Dist. v. Crosby*, 327 S. W. 2d 445 (Tex. 1959).

Letter Opinion 95-088 at 2. And the summary states:

Article IX, section 9 of the Texas Constitution, together with special or general enabling legislation, authorizes the creation of hospital districts for the purpose of providing medical and hospital care for the needy inhabitants of the county or counties in which such districts are located. The salary and expenses of the medical examiner's office are not authorized medical and hospital expenses which can be funded by a hospital district.

Id, at 4. Thus, Letter Opinion 95-088 appears to misstate the authority conferred and the responsibility imposed on hospital districts created pursuant to section of article IX.<sup>1</sup>

Section 9 of article IX provides the following in pertinent part:

The Legislature may by general or special law provide for the creation,, establishment, maintenance and operation of hospital districts composed of one or more counties or all or any part of one or more counties with power to issue bonds for the purchase, construction, acquisition, repair or renovation of buildings and improvements and equipping same, for hospital purposes; . . . providing that any district so created shall assume full responsibility for providing medical and hospital care for its needy inhabitants. (Emphasis added.)

Section 9 does not limit the purpose for which hospital districts may be established to the provision of medical and hospital care for the needy. Rather, it provides that hospital districts may be created for "hospital purposes" and that "any district so created shall assume full responsibility for providing medical and hospital care for its needy inhabitants." See Attorney General Opinion C-382 (1965). In other words, any district created by a county to provide medical and hospital care for its non-needy residents must also provide such care for its needy residents. And, indeed, the Lubbock County Hospital District explicitly is so required by its enabling statute and its subsequent amendments:

The district authorized to be created by this Act is charged with the responsibility of establishing a hospital or a hospital system, including medical facilities or other health facilities, within its boundaries to furnish hospital and medical care to the residents of the district. After this district is created as provided in Section 4 of this Act, no other municipality or political subdivision shall have the power to levy taxes or issue bonds or other obligations for hospital purposes or for providing medical care within the boundaries of the district. This district shall provide all necessary medical and hospital care for the needy inhabitants of this district. The district, subject to the approval of the

Lubbock County Commissioners Court, may render primary care, emergency services, preventive medicine, and other health-related services outside the district, provided that these activities meet the purpose of the district as established by this section.

Acts 1967, 60th Leg., ch. 484 § 3, as amended by Acts 1977, 60th Leg., ch. 905, § 1 and Acts 1993, 73rd Leg., ch. 677, § 1 (emphasis added). Thus, Letter Opinion 95-088 appears to have misstated the scope of the authority conferred on the Lubbock County Hospital District, and, for this reason alone, I feel that a reconsideration of your opinion is appropriate.

My second concern with Letter Opinion 95-088 arises from its failure to discuss adequately why the provision of medical examiner services to the county does not fall within the authority of the district "to furnish hospital and medical care to the residents of the district". The opinion fails to discuss either the duties of the medical examiner or the meaning of "hospital and medical care". Instead it merely asserts without more that such services do not constitute "hospital and medical care".<sup>2</sup>

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*1. Through, admittedly, the letter opinion does seem to acknowledge that the provision of medical care and hospital care of the county's non-needy residents is the responsibility of the district also:*

*Article IX, section 9 of the constitution and the enabling legislation direct the district to assume full responsibility for providing medical care for the district's residents and needy inhabitants.*

*Letter Opinion 95-088, at 3 (emphasis added).*

Article IX, section 9 of the constitution and the enabling legislation direct the district to assume full responsibility for providing medical care for the district's residents and needy inhabitants. *While the office of the county medical examiner would seem to share in this responsibility, we conclude that such office does not provide medical or hospital care for the residents of the county. See Attorney General Opinion M-256 (1968) (hospital district lacked authority to expend funds for building and operating a "Crime Lab"); see also Attorney General Opinion H-31 (1973) (hospital district lacked authority to assume duties and functions of city and county health departments).* Therefore, we further conclude that no express or implied authority exists to fund the salary and expenses of the office of the county medical examiner.

Letter Opinion 95-088 at 3.

Your opinion appears to rely, at least in part, on Attorney General Opinion M-256 (1968), which concluded that the Dallas County Hospital District could not expend funds for building a "crime lab".

You have requested an opinion as to whether the Board of Managers of the Dallas County Hospital District has the authority to expend funds of the district for the purpose of building, equipping and operating a crime laboratory. You state in your request that its primary purpose would be to aid in crime detection and to present evidence in connection with the prosecution of criminal cases; its better known and more common functions relate to the determination of alcohol and drug content of blood samples, ballistic and firearms identification, analysis and identification of narcotics, marijuana and dangerous drugs, analysis and comparison of hair, skin, poisons and other substances obtained in criminal investigations, and the use of various chemicals and apparatus in connection with crime detection.

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2. Section 9 of article IX does not define "medical care and hospital care". Section 9A of article IX was added in 1985, which permits the legislature to

determine the health care services a hospital district is required to provide, the requirements a resident must meet to qualify for services, and any other relevant provisions necessary to regulate the provision of health care to residents.

The legislature has not yet exercised the authority conferred by section 9A.

Attorney General Opinion M-256 (1968) at 1. The opinion also appears to rely on Attorney General H-31 (1973), which held that a hospital district could not assume all of the duties of city and county health departments:

Among the services performed by the health departments of Fort Worth and Tarrant County are restaurant, meat, milk, sewage, water and other "regulatory" inspections. "Non- regulatory" services performed include the operation and maintenance of a venereal disease clinic, vaccinations for communicable diseases, etc.

Attorney General Opinion H-31 (1968) at 1. That opinion concluded that the "regulatory services" could not be performed by the hospital district, but that the "non-regulatory" services could be. I have no quarrel with the holdings of these opinions; clearly the services performed by a crime lab and food and health inspection services do not fall within the common understanding of "medical care and hospital care." I question whether they are really opposite to the request that I submitted. And there are other opinions whose relevance to this issue is clear.

Specifically, in Attorney General Opinion M-912 (1971), the attorney general concluded that a hospital district could contract with a private hospital to provide laboratory services, because laboratory testing is a hospital function; in other words, this opinion held that the provision of laboratory services fell within the scope of authority to provide "hospital and medical care". The result in Attorney General Opinion M-92, which was reached in 1972 would be reached today in light of the fact that section 241.003 of the Health and Safety Code defines general and special hospitals to include provision of "clinical laboratory services." *See also* Attorney General Opinion DM-66 (1991) (a hospital district, which had explicit authority to construct buildings on its premises, could construct a building and then lease it to physicians who sought to use the facility to provide kidney dialysis and renal care to patients, because such services constituted medical and hospital care); Attorney General Opinion DM-131 (1992) (a hospital district can lease a part of its hospital facility to a group of private physicians for the operation of an adolescent drug treatment center, because the provision such services constitutes hospital care).

The tasks assigned to a medical examiner necessarily involve the sorts of laboratory testing that were held to be permissible "hospital and medical services" in Attorney General Opinion M-912. Section 8 of article 49.25 of the Code of Criminal Procedure imposes on the medical examiner the duty to perform an autopsy if he believes that such is necessary. "Autopsy" is defined to mean a postmortem examination of the body of a person, including X-rays and an examination of the internal organs and structures after dissection, to determine the cause of death or the nature of any pathological changes that may have contributed to the death.

CODE OF CRIMINAL PROCEDURE, art. 49.01(1).

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And finally, your opinion ignores Article 49.25 of the Code of Criminal Procedure sets forth duties to be performed by medical examiners and provides at section 9:

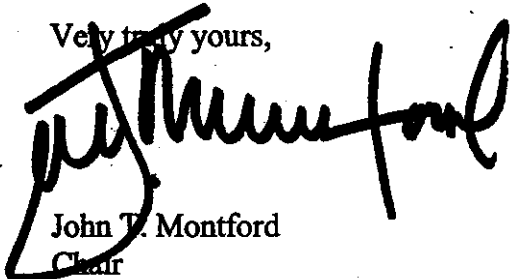
In performing an autopsy the medical examiner or authorized deputy may use the facilities of any city or county hospital within the county or such other facilities as are made available.

If the tests that the medical examiner is required to perform are such that he may use the facilities of any city or county hospital in order to perform them and if a hospital may offer only "hospital and medical services", it follows that the tests a medical examiner is required to perform are "hospital and medical services".

Moreover, the opinion fails to consider whether a hospital district may be compelled to pay for the services of a medical examiner if he performs the requisite testing on patients of the hospital who have died or in situations in which the medical examiner performs tests when section 6 of article 49.25 does not require an autopsy to be held or in situations in which a medical examiner performs tasks, not as medical examiner, but as a physician. Nor do you consider whether and under what circumstances a hospital district and a county may enter into an Inter local Cooperation Act under Chapter 571 of the Government Code whereby the hospital district may pay for services performed by the county medical examiner when the medical examiner is providing services in his capacity as physician, *e.g.*, as a pathologist performing tests for other physicians.

As a consequence, I request that you reconsider Letter Opinion 95-088.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to read "John T. Montford". The signature is written over the typed name and title.

John T. Montford  
Chair

Senate Finance Committee  
Texas State Senate

JTM/sp